HIGH COURT OF CHHATTISGARH AT BILASPUR

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WRIT PETITION No. 5658 OF 2005

N. R. Chandrakar

Versus

State of Chhattisgarh and others

O R D E R

POST FOR: 20/3/2006

Sd/-
Fakhruddin
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION No. 5658 OF 2005

N. R. Chandrakar

Versus

State of Chhattisgarh and others

Petitioner by Shri Manoj Dubey, Advocate

State/Respondent No. 1 and 2 by Shri G.K. Beriwal, Dy. Advocate General.

Respondent no. 3 by Shri Ayaz Naved, Advocate.

ORDER

As per Fakhruddin,J

Heard.

2. By this petition under Articles 226/227 of the Constitution of India the petitioner challenges the order No. F-1-2/2005/14-1 dated 27/10/2005 (Annexure-P/1) whereby the petitioner has been transferred from Bagbahara, District Mahasamund to District Dantewara.

3. By Annexure-P/1 issued by the State, 15 persons have been transferred on administrative grounds and the petitioner's name finds place at S.No.7. The petitioner has filed this petition on the ground that State has framed a policy for 2005-06 and there is a ban imposed vide order dated 18-8-2005 (Annexure-P/2) and between 15-8-2005 to 31-8-2005, only in special cases transfer can be made with the coordination of the Chief Minister and no transfer can be made after 31-8-2005. It is contended that there is no administrative exigency and the transfer has been effected mala fide at the behest of the Member of

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Legislative Assembly. It is further contended that the petitioner was discharging the duties with full dedication and sincerity. It is also contended that during his posting at Bagbahara the petitioner had come across a number of cases under the State sponsored and subsidized schemes namely Nalkup Yozana and Bio-Gas Sayantra Nirman Yazana. It is stated that the petitioner made various efforts to the higher authorities appraising them with correct picture and due to the report submitted by the petitioner some persons got annoyed and they approach to the Member of Legislative Assembly who inspite of appreciating the petitioner, got him transferred. It is contended that the order of transfer has been issued during the ban period and against the transfer policy. Reports submitted by the petitioner have been filed as Annexure-P/4. Annexure-P/5 is the letter written by respondent No.3 making a request for transfer of four persons including the petitioner. The petitioner by letter dated 28-7-2005 (Annexure-P/7) informed the Secretary, Department of Agriculture, about the irregularities.

4. The respondents No. 1 and 2 have filed joint return. The respondent No. 3 has also filed return.

5. In the return filed by the respondents no. 1 and 2 in para 2, it is stated that the petitioner has been transferred purely on administrative ground along with 14 other persons and that too with prior co-ordination of the Chief Minister as per the transfer policy and since the petitioner has been transferred purely due to the administrative exigencies, therefore, it cannot be

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interfered unless and until it is proved by cogent evidence and material document. In Para 3 of the return, it is stated that the petitioner has been performing his duty since 1985 in his home district Mahasamund and he has remained posted in his home district for more than twenty years and he cannot claim to be remained there for a long. It is stated that the petitioner was earlier transferred vide order dated 6-8-2002 from Saraipali to Dantewara but instead of joining, he went on leave for a long time and subsequently joined at Bagbahara only after the order was modified.

6. It is contended that the order of transfer is exclusively within the domain of the administrative authorities to decide that who should be transferred and posted where. Reliance has been placed in the case of **Kendriya Vidyalaya Sangathan vs. Damodhar Prasad Pandey** reported **2004 AIR SCW 5563** and **State of U.P and others vs. Goverdhan Lal** reported in **(2004) XI SCC 402**. While replying to Para 5.1 of the petition, it has been reiterated that vide Annexure-R/1 dated 6-8-2002 the petitioner was transferred from Saraipali, District Mahasamund to the office of the Deputy Director, Agriculture, Dantewara, but instead of joining he went on leave for a long period and subsequently on his request the said transfer order was modified vide order dated 30-9-2003 (Annexure-R/2) and he was transferred to Bagbahara District Mahasamund i.e. the petitioner's home block. While replying to para 5.2 of the petition, it has been specifically denied that the petitioner has

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been transferred mala fide for harassing him and order has been issued in the vested interest of Member of Legislative Assembly. It has been reiterated that he has been there for more than twenty years. It is further stated that the transfer order has been passed in accordance with the transfer policy in due co-ordination with the Chief Minister. Copy of note sheet showing the prior approval of Chief Minister has also been filed as Annexure-R/3. In reply to para 5.4 of the petition, it is stated that in Dantewara District only ten Senior Agriculture Development Officers are working against twenty six posts and sixteen posts are still vacant. Document Annexure-R/4 has been filed to show that if the impugned transfer order is quashed it would rather cause loss to the Department. It has also been denied that any of the ineligible candidates has been given any benefit under the Scheme.

7. In the return filed by respondent No.3, which is duly supported by an affidavit, it is stated that the petitioner is resident of village Ganjar, Block Bagbahara, District Mahasamund and since last two years he is posted at Block Bagbhahara in which his home village comes. It is stated that the petitioner being posted at his home block he is misusing his administrative powers and ill-treating the local agriculturists and is doing partiality by giving priority to his personal work and contacts than discharging his duties. It is stated that the agriculturists of that area made representations to respondent No.3, which have been filed cumulatively as Annexure-R-3/1. It

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is also stated that the subordinate field staff of the petitioner had made representation to respondent No.3 as per Annexure-R-3/3 about the working of the petitioner. In para 10 of the return it has been stated that the respondent No.3 has no introduction with the petitioner, therefore, the question of ill-will/mala fide intention against him does not arise. It is further stated that the respondent No.3 requested for petitioner's transfer because of representations made to him by the agriculturists and local representative and also due to the feeling of dissatisfaction amongst the people. It is stated that transfer has not been done with mala fide intention.

8. The validity of the transfer order has been assailed on the ground that the order is vitiated by mala fide and has been passed at the behest and under the influence of Member of Legislative Assembly and suffers from mala fide and further that the transfer is made contrary to the policy laid down by the State Government.

9. Before dealing with the rival contentions, it is to be noted that ambit and scope of judicial review in matters of transfer of public servant specially those who are working under the State is very limited. It is the prerogative of the State employer to decide who should work where to meet the exigencies of service and in the public interest. It is now settled principle of law that the transfer order can be questioned when it is vitiated on account of mala fide and it is passed in contravention of mandatory provisions of any statute or regulation or rules

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framed thereunder. It is well settled by catena of decisions that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a particular place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of mala fide or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate Court on the orders of the transfers made on administrative grounds. The reason for this self-imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system. This Court in the case of **N.D. Atulkar – v- State of Chhattisgarh and others** reported in **2006 L.T. (C.G.) 1,** held as under :

> *"It is well settled by catena of decisions of the Apex Court and High Courts that transfer of a Government or public servant who is appointed to a cadre of transferable post from one place to another, is an ordinary incident of service and, therefore, does not result in any alteration of*

conditions of service to his disadvantage and therefore, transfer cannot be said to be punitive in nature. Transfer is an incident of service and an employee has no right to be posted at a particular place. An employee holding a transferable post has no legal right to insist for his posting at a particular place of his choice. Transfer of public servant made on administrative grounds of public interest should not be interfered with by the Courts unless there is strong and pressing grounds rendering the transfer order illegal on the ground of violation of mandatory statutory rules or on the ground of mala fide or on the ground of lack of authority. The Courts or the Tribunals cannot sit as appellate Court on the orders of the transfers made on administrative grounds. The reason for this self-imposed restraint is that the wheels of administration should be allowed to run smoothly and the Courts or the Tribunals are not expected to interdict the administrative system."

10. Division Bench of this Court in the case of **Haider Ali Rizavi –v- State of Chhattisgarh and others** in W.P.No.4926/2005 decided on 29th November 2005, where similar question arose regarding involvement of Minister, held as under :

".....However, Mr. Rajeev Shrivastava would specifically draw our attention to the allegation that the transfer order was issued on the basis of a letter written by respondents 7 and 8. It is stated in paragraph 5.7 that after receipt of the impugned transfer order, when he made enquiry he came to know that the sixth respondent Minister passed the impugned order at the behest of respondents 7 and 8. Quite curiously, the source of information is not disclosed for the reasons best known to the petitioner. Be that as it may, if the respondents 7 and 8 who are holding certain offices in local bodies and if they had made representations and the Minister In-charge even assuming that he has taken into consideration along with other materials and utility decided to transfer the petitioner in the public interest, the said action cannot be faulted with simply because the Minister In-charge has taken into account not only other relevant materials but also the letter written by respondents 7 and 8. It needs to be

noticed that so long as the action of the sixth respondent is not vitiated by mala fide, factual or legal, the action taken by him cannot be condemned as arbitrary or illegal simply because the letter written by respondents 7 and 8 has also gone into the decision-making. We say this because it is the prerogative of the State employer to decide who should serve where. It is not the vested right of any employee under the State to insist that he should be allowed to serve at a particular place or a particular post. On the other hand it is the liability of each and every public servant to be transferred from one post to another post, which is equivalent and from one place to another place. If the right of the State Employer is meddled or interfered with by the Court lightly, we are afraid, the public administration would collapse and would not be effective in sub-serving the public interest....."

11. Shri Dubey, counsel for the petitioner, referred a decision of the Hon'ble Supreme Court rendered in the case of **Arvind Dattatraya Dhande vs. State of Maharashtra and others** reported in **AIR 1997 SC 3067** to contend that the order is mala fide and liable to be set aside. In this case the Hon'ble Supreme Court held that :

"in view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala fide exercise of the power to demoralize honest officers who would efficiently discharge the duties of a public office."

12. In the instant case in the return filed by the respondents no. 1 and 2 it has been categorically stated that the petitioner has been transferred purely on an administrative ground along with 14 other persons and that too with prior co-ordination of the Chief Minister as per the transfer policy and since the petitioner has been transferred purely due to the administrative

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exigencies, therefore, it cannot be interfered unless and until it is proved by cogent evidence and material document. In para 3 of the return, it is stated that the petitioner has been performing his duty since 1985 in his home district Mahasamund and he has remained posted in a home district for more than twenty years and he cannot claim to be remained there for a long. It is stated that the petitioner was earlier transferred vide order dated 6-8-2002 from Saraipali to Dantewara but instead of joining, he went on leave for a long time and subsequently joined at Bagbahara only after the order was modified. In para 7 of the return, it has been reiterated that earlier the petitioner was transferred from Saraipali, District Mahasamund to the office of the Deputy Director, Agriculture, Dantewara, but he did not join and when the above order was modified, then only he joined at Bagbahara. It has been denied that the petitioner has been transferred mala fide for harassing him and order has been issued in the vested interest of Member of Legislative Assembly. It has been reiterated that he has been there for more than twenty years and the transfer order has been passed in accordance with the transfer policy in due co-ordination with the Chief Minister, which is evident from Annexure-R/3. As contended by respondents No. 1 and 2, in Dantewara District only ten Senior Agriculture Development Officers are working against twenty six posts and sixteen posts are vacant. The Department has come forward with a plea that if the impugned transfer order is quashed it would rather cause irreparable loss to the Department. The respondent No.3 has come forward with

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the return that the petitioner is resident of village Ganjar, Block Bagbahara, District Mahasamund and since last two years he is posted at Block Bagbhahara in which his home village comes. It is stated that the petitioner being posted at his home block he is misusing his administrative powers and ill-treating the local agriculturists and is doing partiality by giving priority to his personal work and contacts than discharging his duties. It is stated that the agriculturists of that area made representations to respondent No.3. One representation is made by number of villagers complaining about the petitioner, which is at page No.6 of the return of respondent No.3, then four persons namely; Anand Ram Sinha, Motilal Chandrakar, Dhani Ram Sinha & Deen Dayal Sinha, submitted representation to the respondent No.3 for transfer of the petitioner, which is at page No.7. One Bhuvana Lal Sahu, Member, Janpad Panchayat, Bagbahara also submitted a representation dated 6-7-2005 to the respondent No.3 complaining about the activities of the petitioner, thereafter villagers of Saraipali again submitted letter to the Member of Legislative Assembly, which is at page No.9. The Sarpanch, Gram Panchayat, Bhadarsi, Block Bagbahara also made complaint against the petitioner on 10-10-2005. The Chairman, Krishi Upaj Mandi Samiti, Saraipali also made a complaint to the Collector, Mahasamund and to the Collector (Vigilance), against the petitioner, which are at page 11 & 15 of the return. The Secretary of the Krishi Upaj Mandi Samiti, Saraipali also made a complaint to the Dy. Director, Agriculture against the petitioner, which is at page 13. Newspaper clippings

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have also been filed against the illegalities committed by the petitioner.

13. So far as legal position is concerned, it is well settled that where the malafide is established in transfer matter, judicial review is available and transfer order is liable to be set aside. It is borne out that the petitioner has been serving for last twenty years in his home district and he has been posted for last two years at Block Bagbahara in which his home village comes i.e. village Ganjar. Representations against the working of the petitioner have been filed. The State has also come forward with the case that the services of the petitioner are required at Dantewara where there is shortage of Officers and if the transfer order is quashed the Department would suffer irreparable loss. This Court has considered the entire material and is of the opinion that the mala fide is not at all established and on the other hand, the material on record goes to show that transfer has been made as an exigency of service. Sometimes shifting of the person is required in his own interest as well specially when he is posted in his own home block. These questions are within the domain of the concerned authorities.

14. The legal position has been reiterated in the case of **Kendriya Vidyalaya Sangthan vs. Damodar Prasad Pandey and others (2004 AIR SCW 5563)** in which the Hon'ble Apex Court in para 4 has held that:-

> *"Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (See Ambani Kanta*

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Ray –v- State of Orrisa, 1995 (Suppl) 4 SCC 169). Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it (See Union of India –v- S.L. Abbas, AIR 1993 SC 2444). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In Union of India & ors. Vs. Janardan Debanath & anr. (2004) 4 SCC 245, it was observed as follows :

'No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities, substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan (2001) 8 SCC 574'."

15. Having given thoughtful consideration to the facts and circumstances of the case, material on record and in view of the discussions made hereinabove and recent decisions in the cases of **Kendriya Vidayalaya Sangathan** (Supra) & **National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan** reported in **(2001) 8 SCC 574**, it is not a case where the petitioner has been able to make out a ground for interference under Article 226/227 of the Constitution of India.

16. In the result, the petition fails and is dismissed.

Sd/-
Fakhruddin
Judge

P/Gowri